

ALTERNATIVE DISPUTE RESOLUTION

An amendment to the Condominium Act, N.J.S.A. 46:8B-14, P.L.1995 c. 313 and the law governing planned real estate developments, N.J.S.A. 45:22A-44, require associations to provide “fair and efficient” means for unit owners to resolve disputes between one another or against the association. It is referred to as alternative dispute resolution (ADR). This is required as an alternative to litigation. The law requires condominium associations to provide written notice of dispute resolution as a condition of issuing a fine (N.J.S.A. 46:8B-15f.).

The Association Regulation Unit within the Planned Real Estate Development section has the responsibility to require associations to enact alternate dispute resolution procedures if the deficiency is brought to its attention. This office cannot, however, provide ADR and cannot address the substance of your dispute. For example, this office cannot require an association’s board to follow its bylaws or take maintenance actions, remove individual board members, order board members to take or rescind actions, order revisions to or question financial practices (other than those related to the obligation to disclose generally accepted accounting principles or GAAP records), or force boards to change discretionary actions.

Unit owners are empowered to take action to correct such matters either through ADR or litigation as well as by electing new board members. Any allegations of fraud or other criminal conduct should be brought to the attention of your county prosecutor or other pertinent law enforcement agency. Please note: the State Attorney General represents State agencies and general public interests and does not act on individual complaints regarding allegations of board misconduct.

The applicability of ADR to a specific complaint requires a determination of whether it relates to a discretionary board management decision or constitutes a violation of governing documents (Master Deed, Bylaws, Association Rules, etc.). Matters in which boards properly exercise discretion are subject to review through the democratic process (petitions, elections, etc.) while violations of governing documents or other legal requirements justify the use of the ADR procedure. Thus, if you proceed to ADR, you should be prepared to refer to specific laws or portions of the governing documents which you believe were violated.

There is no formality required to request ADR but you should make it in writing, to the board, unless the procedure of your association provides otherwise. You should do so even if your association does not have a specific written ADR procedure or has one which does not appear to satisfy the “fair and efficient” criteria. In your request, state your complaint clearly and specifically request that you be provided ADR. If you do not have a copy of your association’s ADR procedure, you should request that the board or its agent supply you with one.

You may inform the board that if there is no response within 14 days you will notify this office. Please note, we do not require that associations file their ADR procedures with us and there is no requirement to receive our approval before instituting a procedure.

Each association is authorized to design the ADR procedure which it feels best satisfies the needs of its owners. Procedures may range from mediation (informal recommendations) rendered by designated neighbors to non-binding arbitration (formal decisions) in a court like setting with numerous formalities overseen by a trained individual. ADR providers are appointed by a board but the association should have an independent means of selection. Whoever is selected must be impartial.

ADR was intended as an alternative to litigation, thus it is not necessary to have legal counsel. However, you may, if you choose, be represented.

Although there is no standard ADR procedure, there is one fundamental rule; the board cannot be the ADR provider. Thus, neither the board nor any member can sit as or with the ADR panel. The board or its members or agent or representative can appear and present the board's position. The law provides that either party may appeal to court following an ADR procedure. The board cannot appeal a decision to itself. Our office is not empowered to overturn or even modify the outcome of an ADR proceeding.

Please note that ADR is not automatically binding on boards. Thus, if a board fails to cooperate with a recommendation or arbitration decision against it, you must enforce your right in court. Additionally, ADR is not a means to secure an order to stop a board from taking action or to force a board to act. These can only be secured through appropriate court proceedings. Moreover, ADR is not the means to obtain monetary damages against the association.

If you do not receive a positive response to your request for ADR or the association informs you there is no ADR, please fill in the enclosed form and mail it to the address listed on the form. Please also include a brief explanation of the circumstances under which you were denied your ADR rights or how you know there are no ADR procedures.

For further information on either the Planned Real Estate Development Full Disclosure Act, N.J.S. 45:22A-21 or the Condominium Act, N.J.S. 46:8B-1, you should look under the heading 'Statutes' at www.njleg.state.nj.us.